

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HALEIGH BREEST,

Plaintiff,

-against-

PAUL HAGGIS,

Defendant.

Index No. 161137/2017

Motion Sequence No. 12

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL
A SAMPLE OF HAGGIS'S DNA**

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HAGGIS SHOULD PRODUCE HIS DNA FOR TESTING

Defendant Paul Haggis should be compelled to produce a sample of his DNA, so it can be compared to a sample Plaintiff Haleigh Breest has from the night Haggis raped her. Laboratory analysis reveals semen in the inside of the crotch of Ms. Breest's tights she wore that night in Haggis's apartment. Butler Aff. Ex. A (SERI Lab Report). The DNA test will help prove that Ms. Breest told the truth: Haggis vaginally penetrated and raped her.

In his Verified Answer, Haggis swore under oath that he did not "vaginally penetrate[] Ms. Breest with his penis." Salzman Aff. Ex. A ¶ 63; Ex. B ¶ 63. [REDACTED]

[REDACTED] Salzman Aff. Ex. C at No. 17 (submitted under seal.)¹ The DNA sample will help prove that Haggis has already committed perjury about one of the most basic facts in the case: whether he vaginally penetrated and raped Ms. Breest.

Haggis's DNA must be produced to prove that (i) Haggis penetrated Ms. Breest's vagina with his penis, and (ii) Haggis lied about this basic fact under oath in this case.

A. Haggis's DNA Is Relevant

Ms. Breest saved the tights she was wearing on the night Haggis sexually assaulted her. Breest Aff. ¶ 3. Haggis forcibly removed the tights before he assaulted her. *Id.* ¶ 1. The next morning, before showering, Ms. Breest put the tights back on. *Id.* ¶ 2. She was not wearing underwear, and semen inside her vagina from the rape seeped down into the inside of the crotch of her tights. *See id.* She never wore or washed the tights again. *Id.* ¶ 3. She sealed

¹ Haggis designated this interrogatory response "confidential" under the Confidentiality Order. As a result, Plaintiff has redacted the description from this public filing and will file the interrogatory response and the unredacted memorandum of law under seal.

the tights in a bag and, years later, gave the tights (still sealed inside the same bag) to her lawyers. *Id.*; Kaplan Aff. ¶ 2. The tights (still inside the bag) were sent for DNA testing at the Serological Research Institute (“SERI”), an accredited laboratory used by law enforcement for this sort of analysis. Kaplan Aff. ¶ 4; Butler Aff. Ex. A.

Using an alternate light source which fluoresces bodily fluids, SERI located fluorescent bodily fluid stains in several places on the inside of the tights, including in the crotch of the tights. Butler Aff. ¶ 5 & Ex. A at 1. Further analysis revealed the presence of semen and a very small quantity of sperm in the crotch of the tights, in addition to other kinds of DNA such as skin cells and saliva. Butler Aff. ¶¶ 5-8 & Ex. A at 1, 2. There is a sufficient quantity of DNA to do a comparison between the semen and sperm in the crotch of the tights and a sample of Haggis’s DNA. Butler Aff. ¶ 9 & Ex. A at 3.

Plaintiff therefore sought in discovery from Haggis: “A sample of your DNA.” Salzman Aff. Ex. D at No. 7. Haggis has refused to produce this sample. Salzman Aff. ¶ 7 & Ex. E at 3.

Haggis’s DNA is highly probative evidence of the claims and defenses in this case. It will both corroborate Plaintiff’s claim that Haggis vaginally raped her and impeach Haggis’s denial that there was no vaginal intercourse at all.

1. The DNA Will Corroborate Plaintiff’s Rape Claim

Proof that the semen and sperm on the inside of Plaintiff’s tights matches Haggis’s DNA sample will provide corroborating evidence for Plaintiff’s rape claim.

Plaintiff alleges that Haggis sexually assaulted and raped her, including that “Haggis vaginally penetrated Ms. Breest with his penis.” Salzman Aff. Ex. B ¶ 63. After the rape, Plaintiff “felt pain in her vagina” and “observed vaginal tearing.” *Id.* ¶ 71.

But Haggis denied any vaginal intercourse at all. Salzman Aff. Ex. A ¶ 63. He claims there was only consensual oral sex, *id.* ¶ 54, [REDACTED]

[REDACTED] Salzman Aff. Ex. C at No. 17 (submitted under seal.)

Laboratory analysis performed on Ms. Breest's tights from that night reveals male DNA in the form of semen and sperm inside the crotch of the tights. Butler Aff. ¶¶ 5-8 & Ex. A at 1, 2. The presence of semen and sperm inside the crotch of Plaintiff's tights corroborates her account that there was vaginal intercourse. There is a sufficient quantity of DNA to perform a comparison analysis. Butler Aff. ¶ 9 & Ex. A at 3.

The unusually small quantity of sperm found in the DNA sample (approximately 6 individual sperm) is consistent with a perpetrator who had a vasectomy. Butler Aff. ¶¶ 7-8; Stahl Aff. ¶ 2. Haggis told Ms. Breest during the sexual assault that he had had a vasectomy, saying "I've had a vasectomy, so you're fine. You can't get pregnant." Salzman Aff. Ex. B ¶ 62.

[REDACTED] Salzman Aff. Ex. C at No. 18 (submitted under seal).

Haggis should be compelled to produce his DNA so that comparison testing can be done and it can be shown that his DNA matches the semen and sperm inside Plaintiff's tights.

2. The DNA Will Impeach Haggis's False Denial

Proof that the semen is Haggis's will also impeach Haggis's sworn denial that he engaged in vaginal intercourse with Plaintiff.

Haggis denies that he vaginally penetrated Ms. Breest with his penis and admits only that Ms. Breest gave him oral sex, which he claims was consensual. Salzman Aff. Ex. A ¶¶ 54, 63.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Salzman Aff. Ex. C at No. 17 (submitted under seal).

Haggis committed perjury in his verified Answer [REDACTED].

His denial is contradicted by the physical evidence of Haggis' semen inside the crotch of Plaintiff's tights.

B. Haggis Should Be Compelled to Produce a DNA Sample

Production of DNA samples for comparison testing is appropriate when relevant to the claims and defenses in a case.

For example, in a defamation case captioned *Abu-Aqleyn v. El-Jamal*, the court ordered the plaintiff to produce a DNA sample, so that the defendant could compare it to the DNA on a pair of panties he had kept, which he claimed would prove the truth of his statements that he and plaintiff had an adulterous affair and therefore prove his defense to defamation. No. 8396/06, 2007 WL 7216905 (Sup. Ct. Westchester Cty. Aug. 29, 2007).

In *McGrath v. Nassau Health Care Corp.*, a sexual harassment case, the court ordered the plaintiff to provide a DNA sample so the defendant could compare it to DNA on a blanket he had, which he argued supported his defense that he and plaintiff had a consensual sexual relationship and impeach plaintiff's denial of sexual intercourse. 209 F.R.D. 55, 57 & 65 (E.D.N.Y. 2002).

Comparison DNA testing is commonly ordered to establish identity in surrogate and family court cases. *See, e.g., In re Poldrugovaz*, 50 A.D.3d 117, 131 (2d Dep't 2008); *In re Estate of Betz*, 74 A.D.3d 1459, 1464 (3d Dep't 2010); *In re Estate of Gaynor*, 13 Misc. 3d 331, 334 (Sur. Ct. Nassau Cty. 2006). Comparison DNA samples are also regularly compelled in criminal cases where the suspect's constitutional rights are greater than in a civil case. *See, e.g., People v. Velez*, 54 Misc. 3d 1208(A), 2017 WL 162287 at *2 (Sup. Ct. Bronx Cty. Jan. 13,

2017) (citing *In re Abe A.*, 86 N.Y.2d 288, 299 (1982)); *People v. Ellington*, 36 Misc. 3d 1207(A), 2012 WL 2580171 at *5 (Sup. Ct. Bronx Cty. June 26, 2012).

Here, the DNA is plainly relevant to proving Plaintiff's rape claim and impeaching Haggis's denial. There is sufficient DNA to do comparison testing if a sample is obtained from Haggis. Butler Aff. ¶ 9. The burden on Haggis is *de minimis*: he need only provide a swab of the inside of his cheek. This process is painless, simple, and fast. It is the equivalent of wiping the inside of his mouth with a Q-tip. Butler Aff. ¶ 10.

Haggis should be compelled to produce a sample of his DNA.

CONCLUSION

Given (i) the relevance of the DNA to a hotly contested issue in this case; (ii) the fact that it can be used both to prove Plaintiff's claim that she was vaginally raped and impeach Defendant's sworn denial; (iii) the minimally invasive nature of obtaining a comparison DNA sample from Haggis; and (iv) the fact that there is sufficient DNA on Plaintiff's tights to perform comparison testing, Haggis should be ordered to produce a DNA sample.

Dated: March 6, 2019
New York, New York

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